

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RENEE H.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C20-5485-MLP

ORDER

I. INTRODUCTION

Plaintiff seeks review of the denial of her application for Supplemental Security Income. Plaintiff contends the administrative law judge (“ALJ”) erred in assessing certain medical opinions and in discounting her testimony. (Dkt. # 21 at 1.) As discussed below, the Court **AFFIRMS** the Commissioner’s final decision and **DISMISSES** the case with prejudice.

II. BACKGROUND

Plaintiff was born in 1979; has a GED and training as a certified nursing assistant, dental hygienist, and emergency medical technician; and has worked as a substitute school assistant, dental assistant, office manager, sales associate, telemarketer, and server. AR at 289, 1230-31, 1233-34. Plaintiff was last gainfully employed in January 2012. *Id.* at 289.

1 In April 2015, Plaintiff applied for benefits, alleging disability as of November 1, 2011.¹
2 AR at 259-65. Plaintiff's application was denied initially and on reconsideration, and Plaintiff
3 requested a hearing. *Id.* at 196-202, 206-14. After the ALJ conducted a hearing in March 2017
4 (*id.* at 95-139), the ALJ issued a decision finding Plaintiff not disabled. *Id.* at 31-51.

5 The Appeals Council denied Plaintiff's request for review (AR at 1-7), and the U.S.
6 District Court for the Western District of Washington granted the parties' stipulation to reverse
7 the ALJ's decision and remand for further administrative proceedings. *Id.* at 1317-24. A different
8 ALJ held a hearing on remand (*id.* at 1205-88), and subsequently issued a decision finding
9 Plaintiff not disabled. *Id.* at 1157-86.

10 Utilizing the five-step disability evaluation process,² the ALJ found:

11 Step one: Plaintiff has not engaged in substantial gainful activity since the application
12 date.

13 Step two: Plaintiff has the following severe impairments: chronic pain syndrome,
14 bilateral plantar fasciitis, bilateral Achilles tendinitis, bilateral lateral epicondylitis,
15 bilateral carpal tunnel syndrome, left shoulder impingement syndrome,
hypersomnia/narcolepsy, obesity, major depressive disorder/mild bipolar disorder, panic
disorder with agoraphobia, unspecified psychotic disorder, and attention deficit
hyperactivity disorder.

16 Step three: These impairments do not meet or equal the requirements of a listed
17 impairment.³

18 Residual Functional Capacity: Plaintiff can perform light work with additional
19 limitations: she can stand and/or walk for two hours in an eight-hour workday. She can
20 never climb ladders, ropes, or scaffolds. She can occasionally balance, stoop, kneel,
21 crouch, crawl, and occasionally climb ramps or stairs. She can frequently finger and feel
bilaterally. She can occasionally reach overhead bilaterally. She must avoid concentrated
exposure to vibrations. She must avoid even moderate exposure to hazards. She can
perform simple, routine tasks. She can have no contact with the public. She can have
occasional superficial contact with coworkers.

22 ¹ Due to the operation of a prior administratively final denial of benefits, the ALJ adjudicated a period
23 beginning with Plaintiff's application date. *See* AR at 1158.

² 20 C.F.R. § 416.920.

³ 20 C.F.R. Part 404, Subpart P, Appendix 1.

1 Step four: Plaintiff cannot perform past relevant work.

2 Step five: As there are jobs that exist in significant numbers in the national economy that
3 Plaintiff can perform, Plaintiff is not disabled.

4 AR at 1157-86.

5 Plaintiff appealed the final decision of the Commissioner to this Court. (Dkt. # 1.)

6 **III. LEGAL STANDARDS**

7 Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social
8 security benefits when the ALJ's findings are based on legal error or not supported by substantial
9 evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As a
10 general principle, an ALJ's error may be deemed harmless where it is "inconsequential to the
11 ultimate nondisability determination." *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)
12 (cited sources omitted). The Court looks to "the record as a whole to determine whether the error
13 alters the outcome of the case." *Id.*

14 "Substantial evidence" is more than a scintilla, less than a preponderance, and is such
15 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
16 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th
17 Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical
18 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d
19 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may
20 neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v.*
21 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one
22 rational interpretation, it is the Commissioner's conclusion that must be upheld. *Id.*

IV. DISCUSSION

A. The ALJ Did Not Err in Assessing the Medical Opinion Evidence

Plaintiff challenges the ALJ's assessment of four opinions written by examining psychologists, and one opinion written by a treating nurse. The Court will address each disputed opinion in turn.

1. *Legal Standards*

In general, more weight should be given to the opinion of a treating doctor than to a non-treating doctor, and more weight to the opinion of an examining doctor than to a non-examining doctor. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996).⁴ Where not contradicted by another doctor, a treating or examining doctor's opinion may be rejected only for "clear and convincing" reasons. *Id.* (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991)). Where contradicted, a treating or examining doctor's opinion may not be rejected without "specific and legitimate reasons' supported by substantial evidence in the record for so doing." *Lester*, 81 F.3d at 830-31 (quoting *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)).

Less weight may be assigned to the opinions of other non-acceptable medical sources, such as nurses. *Gomez v. Chater*, 74 F.3d 967, 970 (9th Cir. 1996). However, the ALJ's decision should reflect consideration of such opinions (Social Security Ruling 06-3p), and the ALJ may discount the evidence by providing reasons germane to each source. *Molina*, 674 F.3d at 1111 (citing *Turner v. Comm'r of Social Sec.*, 613 F.3d 1217, 1224 (9th Cir. 2010); *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001)).

//

⁴ Because Plaintiff applied for disability before March 27, 2017, the regulations set forth in 20 C.F.R. § 416.927 apply to the ALJ's consideration of medical opinions.

1 2. *The ALJ Did Not Err in Discounting Dr. Weiss's Opinion*

2 Peter Weiss, Ph.D., examined Plaintiff in February 2015 and completed a DSHS form
3 opinion and narrative report regarding her symptoms and limitations. AR at 616-22. The ALJ
4 summarized Dr. Weiss's opinion and found some of it to be consistent with the record, but
5 discounted the marked to severe limitations that Dr. Weiss described, finding that part of the
6 opinion to be inconsistent with Plaintiff's activities (caring for children, performing activities of
7 daily living, remodeling a bathroom, and traveling out of state) and based on Plaintiff's
8 exaggerated or inconsistent self-reporting. *Id.* at 1179-80. The ALJ referred to specific
9 exaggerations/inconsistencies listed earlier in the decision: Plaintiff told Dr. Weiss that her
10 problems were primarily medical rather than mental (*id.* at 616); Plaintiff did not describe to Dr.
11 Weiss how she cared for multiple children during the day (*id.* at 617); Plaintiff told Dr. Weiss
12 that she did not perform any chores or socialize (*id.*), even though other evidence in the record
13 shows that she does. *See id.* at 1175.

14 Plaintiff argues that the ALJ's reasons for discounting Dr. Weiss's opinion were not
15 specific and legitimate. First, Plaintiff argues that the activities cited by the ALJ do not
16 undermine Dr. Weiss's opinion. (Dkt. # 21 at 8.) It may be that Plaintiff's childcare or bathroom
17 remodeling activities do not directly undermine Dr. Weiss's opinion, but the ALJ noted that
18 evidence in the record undermines Plaintiff's report to Dr. Weiss that she performed no
19 housework chores (AR at 1175 (citing *id.* at 283, 329)). Furthermore, Plaintiff reported to Dr.
20 Weiss that she avoided public places and did not socialize with anyone other than her family, yet
21 the record showed that she did shop in public, attend church, socialized with others, traveled out
22 of state, and visited a casino. *See id.* at 331, 938, 1679, 1689, 1947, 1951, 2849, 2854. The ALJ
23 reasonably found that these activities were inconsistent with Plaintiff's report to Dr. Weiss, and

1 thus undermined the foundation of his opinion. The ALJ did not err in discounting Dr. Weiss's
2 opinion on this basis. *See Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir. 2001) (affirming an
3 ALJ's rejection of a treating physician's opinion that was inconsistent with the claimant's level
4 of activity); *Calkins v. Astrue*, 384 Fed. Appx. 613, 615 (9th Cir. June 17, 2010) ("[A]n ALJ
5 must be permitted to discount an opinion based principally upon a claimant's self-reporting if the
6 record contains objective evidence that the self-reporting is not credible.").

7 Plaintiff goes on to challenge the ALJ's other reasons for discounting Dr. Weiss's
8 opinions: Plaintiff contends that Dr. Weiss did not find that Plaintiff's statements were
9 exaggerated. (Dkt. # 21 at 8.) But the ALJ did not find to the contrary, and instead herself found
10 that Plaintiff made exaggerated or inconsistent statements to Dr. Weiss, when her reports to Dr.
11 Weiss are compared to the remainder of the record. AR at 1179-80. That Dr. Weiss was perhaps
12 unaware of Plaintiff's inaccurate reporting does not undermine the ALJ's reasoning.

13 Plaintiff goes on to contend that Dr. Weiss's opinion was corroborated by other opinions,
14 and that her psychological condition deteriorated during the period. (Dkt. # 21 at 9-10.) Neither
15 of these arguments shows error in the ALJ's decision, because the ALJ did not discount Dr.
16 Weiss's opinion based on contradictory opinions, nor did she not discount Dr. Weiss's opinion as
17 inconsistent with evidence of Plaintiff's improvement. Because the ALJ's stated reasons to
18 discount Dr. Weiss's opinion are specific and legitimate, the Court affirms the ALJ's assessment
19 of Dr. Weiss's opinion.

20 3. *The ALJ Did Not Err in Discounting Dr. Wheeler's Opinions*

21 Dr. Wheeler examined Plaintiff in 2017, 2018, and 2019, and on each occasion
22 completed a DSHS form opinion describing Plaintiff's symptoms and limitations. AR at 1721-
23 26, 2431-35, 2476-80. The ALJ summarized Dr. Wheeler's conclusions and noted that she had

1 the opportunity to examine Plaintiff multiple times. *Id.* at 1181-82. The ALJ found that Dr.
2 Wheeler's checkbox limitations were somewhat consistent with the overall record and reflected
3 Plaintiff's minimal treatment, but the ALJ discounted the marked and severe limitations
4 indicated in light of Plaintiff's exaggerated/inconsistent self-reporting to Dr. Wheeler, as well as
5 Plaintiff's activities that were inconsistent with Dr. Wheeler's conclusions. *Id.* at 1182.

6 Plaintiff notes that the ALJ's reasons to discount Dr. Wheeler's opinions were the same
7 reasons the ALJ provided to discount Dr. Weiss's opinion (dkt. # 21 at 13), and the Court finds
8 them sufficient for the same reasons explained *supra* with respect to Dr. Weiss's opinion.
9 Although some of the activities cited by the ALJ may not directly contradict Dr. Wheeler's
10 conclusions, Plaintiff's ability to manage her household with multiple children, complete her
11 activities of daily living, and travel out of state are reasonably inconsistent with the limitations
12 described by Dr. Wheeler. Plaintiff did not disclose her responsibilities related to children nor
13 her ability to complete her self-care activities in the description of her daily activities she
14 provided to Dr. Wheeler (AR at 1722, 2453, 2477), and Plaintiff's out-of-state travel is
15 inconsistent with the social deficits/limitations Dr. Wheeler described (*id.* at 1722, 2432, 2477).

16 Furthermore, the ALJ detailed all of Plaintiff's inaccurate self-reporting to Dr. Wheeler,
17 earlier in the decision. AR at 1175-76 (referencing Plaintiff's reporting experiencing
18 hallucinations for the past 10 years in 2019, but denying hallucinations at the 2017 and 2018
19 examinations; Plaintiff's exaggerated description of social isolation in 2017 and 2018; Plaintiff's
20 inaccurate reporting in 2018 as to why she stopped working as a substitute teacher). The ALJ
21 reasonably found that Plaintiff's inaccurate reporting to Dr. Wheeler undermined the foundation
22 of Dr. Wheeler's opinions and properly discounted the opinions on that basis. *See Rollins*, 261
23 F.3d at 856; *Calkins*, 384 Fed. Appx. at 615.

1 4. *The ALJ Did Not Err in Discounting Ms. Henry's Opinion*

2 Plaintiff's treating nurse Kathleen Henry, ARNP, completed a form opinion in January
3 2015 describing Plaintiff's diagnoses and limitations, and indicating that Plaintiff was limited to
4 sedentary work. AR at 592-94. The ALJ noted that Ms. Henry did not perform a physical
5 examination at the time she completed her opinion, and the ALJ found Ms. Henry's conclusions
6 to be inconsistent with Plaintiff's conservative treatment history for her physical complaints, her
7 many normal physical findings, and her activities (caring for her children, completing her
8 activities of daily living, remodeling the bathroom, and traveling out of state). *Id.* at 1179.

9 Plaintiff argues that the ALJ's reasons were not germane because Ms. Henry's
10 conclusions were consistent with the opinions of Drs. Wheeler and Weiss, and Ms. Henry did not
11 overly rely on self-reporting. (Dkt. # 21 at 16.) Plaintiff also disputes whether her treatment was
12 conservative, pointing to her prescription for opioid medication. (*Id.*) Plaintiff also contends that
13 her daily activities do not necessarily contradict Ms. Henry's opinion because they could be
14 performed at her own pace. (*Id.* at 16-17.)

15 Plaintiff has not shown that the ALJ erroneously assessed Ms. Henry's opinion. Plaintiff
16 does not dispute that Ms. Henry's opinion was not based on a physical examination, as the ALJ
17 noted, and this lack of foundation is a germane reason to discount Ms. Henry's conclusions.
18 Furthermore, the ALJ pointed to normal physical findings in the record as inconsistent with Ms.
19 Henry's opinion, and the opinions of Drs. Weiss and Wheeler do not pertain to Plaintiff's
20 physical functioning.

21 Next, the record does contain some reference to opioid medication (AR at 2692-93, 2713-
22 14, 2717-18, 2721-22) in a list of medications, but Plaintiff has not cited any treatment note
23 where she was prescribed opioid medication during the adjudicated period. Instead, the treatment

1 notes that include opioid medications in a summary list of Plaintiff's medications discuss
2 conservative treatment options for Plaintiff's foot and ankle issues. *See id.* at 2692-93, 2713-14,
3 2717-18, 2721-22. The ALJ discussed Plaintiff's treatment history in detail earlier in the decision
4 and explained why she found Plaintiff's treatment to be conservative. *Id.* at 1165-74. Plaintiff
5 has not shown that the ALJ erred in characterizing her treatment for physical complaints as
6 conservative, or in discounting Ms. Henry's opinion on this basis.

7 Lastly, as to Plaintiff's activities, although Ms. Henry described Plaintiff as unable to
8 concentrate and limited in her ability to "exert herself physically" (AR at 592), these limitations
9 are reasonably inconsistent with her ability to care for multiple children, complete her daily
10 activities, and remodel a bathroom. This inconsistency is another germane reason to discount Ms.
11 Henry's opinion. *See Carmickle v. Comm'r of Social Sec. Admin.*, 533 F.3d 1155, 1164 (9th Cir.
12 2008).

13 Plaintiff attempts to focus only on Ms. Henry's mental findings and apparently does not
14 dispute that the ALJ properly discounted her physical findings (dkt. # 23 at 5-6); however,
15 Plaintiff's argument to the Court in the reply brief that "[t]his is a mental case only" (dkt. # 23 at
16 5) does not transform this case into a mental case only. The record is replete with Plaintiff's
17 complaints to treatment providers, examining providers, and Social Security employees
18 regarding physical limitations, and indeed, Ms. Henry opined that Plaintiff had physical
19 diagnoses and limitations. Any attempt to abandon those allegations now does not suggest that
20 the ALJ erred in discounting Ms. Henry's opinion because, *inter alia*, the physical limitations
21 she described were inconsistent with the record.

22 **B. The ALJ Did Not Err in Discounting Plaintiff's Testimony**

23 The ALJ's evaluation of Plaintiff's testimony spans approximately fifteen pages in the

1 decision, and the ALJ explained that she discounted Plaintiff's subjective allegations because (1)
2 Plaintiff's physical complaints either improved with treatment or were treated only
3 conservatively; (2) normal or largely normal objective findings in the record contradicted
4 Plaintiff's claims of disabling limitations; (3) Plaintiff made multiple exaggerated or inconsistent
5 statements regarding her symptoms to multiple providers and at the administrative hearings; (4)
6 Plaintiff refused to take medication (other than Adderall) for her various mental diagnoses; (5)
7 Plaintiff's activities were inconsistent with her allegations; (6) Plaintiff declined or failed to
8 comply with treatment recommendations; and (7) Plaintiff made inconsistent statements
9 regarding her employment history, marijuana use, and tobacco use. AR at 1164-79. An ALJ's
10 reasons to discount a claimant's testimony must be clear and convincing. *Burrell v. Colvin*, 775
11 F.3d 1133, 1136-37 (9th Cir. 2014).

12 Plaintiff does not detail any particular error in the ALJ's findings, but instead generally
13 asserts that her problem was somatization, and the ALJ "fundamentally misunderstood Plaintiff's
14 impairments and limitations." (Dkt. # 21 at 17.) As noted by the Commissioner (dkt. # 22 at 3),
15 however, this argument does not show error in the ALJ's decision because Plaintiff's
16 "physicalizing her mental impairments" (dkt. # 21 at 17) supports the ALJ's interpretation that
17 Plaintiff is not a reliable source of information as to the most she can do despite her impairments.
18 *See, e.g., Chaudhry v. Astrue*, 688 F.3d 661, 672 (9th Cir. 2012) (noting that although the
19 plaintiff argued that "any lack of credibility is explained by [his] dependency and
20 somatization[,] " "[i]t stands to reason that the ALJ's finding that Chaudhry lacked credibility is
21 not undermined by diagnoses that themselves stemmed from Chaudhry's lack of credibility").

22 Plaintiff goes on to argue that Adderall did not help many of her mental symptoms (dkt. #
23 21 at 17), but the ALJ did not state otherwise. Instead, the ALJ found that Plaintiff's refusal to

1 take medication for those other symptoms undermined her allegation that they caused disabling
2 limitations. *See* AR at 1176. The ALJ asked Plaintiff why she refused to take psychotropic
3 medication at the hearing, and the ALJ found Plaintiff's descriptive of a general fear of side
4 effects to be unpersuasive. *See id.* at 1246-47, 1176. Plaintiff has not shown that the ALJ erred in
5 finding that Plaintiff's allegations were undermined by, *inter alia*, her personal preference to
6 avoid treatment. *See Molina*, 674 F.3d at 1114-15.

7 Because Plaintiff has failed to show that any of the ALJ's reasons for discounting her
8 testimony were erroneous, and many of them are unchallenged, the Court affirms the ALJ's
9 assessment of Plaintiff's subjective testimony.

10 V. CONCLUSION

11 For the foregoing reasons, the Commissioner's final decision is **AFFIRMED** and this
12 case is **DISMISSED** with prejudice.

13 Dated this 8th day of March, 2021.

14 

15 MICHELLE L. PETERSON
16 United States Magistrate Judge
17
18
19
20
21
22
23